

COMMITTEE ON THE JUDICIARY VIEWS AND ESTIMATES FOR FISCAL YEAR 2017

The following presents the views and estimates of the Committee on the Judiciary regarding the Fiscal Year 2017 budget.

Relief from Excessive Regulation

Excessive and unnecessary regulation is a hidden tax on hardworking Americans trying to make a living. Precious resources and manpower spent on complying with volumes of needlessly complex federal regulations are wasted because they could be spent on innovating, hiring new workers, and rolling out new products and services. We must ensure that obsolete regulations are eliminated and that any necessary regulations are updated, streamlined, and are the least cost alternatives that will still accomplish the statutory objectives.

H.R. 185, the Regulatory Accountability Act, reforms the Administrative Procedure Act to generally require agencies to choose the lowest cost rulemaking alternative that meets statutory objectives; improve agency fact-finding and identification of regulatory alternatives; use the best reasonably obtainable science; provide on-the-record, streamlined administrative hearings in rulemakings that would impose \$1 billion or more in annual costs; require advance notice of proposed major rulemakings to increase public input before costly agency positions are proposed and entrenched; and strengthen judicial review of new agency regulations. The bill would dramatically reduce the billions of dollars in costs imposed by new regulations while allowing the benefits of statutory goals to be achieved. Reform is imperative to reduce the overall costs of federal regulations, currently estimated to be at least \$1.88 trillion per year, or roughly \$15,000 per U.S. household. This legislation passed the House on January 13, 2015, by a vote of 250-175. CBO estimated that the similar version of this legislation passed by the House during the 113th Congress would cost about \$70 million to implement over the 2014-2018 period, assuming the appropriation of necessary funds. Such funding was estimated to cover the government-wide costs of additional personnel, contractor costs, and other administrative expenses associated with meeting the new requirements under the legislation.

H.R. 235, the Permanent Internet Tax Freedom Act, makes permanent an existing temporary ban on state taxation of Internet access and multiple or discriminatory taxes on Internet commerce. Were the moratorium to lapse, the potential tax burden on consumers would be substantial. The average tax rate on communications services in 2007 was 13.5%, more than twice the average rate on all other goods and services. CBO estimates that the direct costs of the legislation to state and local governments would “probably total more than several hundred million dollars annually.” But these costs to states are best viewed as savings for taxpayers who use the Internet, one of the most unique gateways to knowledge, and engines of self-improvement in all of human history. Indeed, the Judiciary Committee heard testimony that a substantial portion of the remarkable productivity growth that increased jobs and income between 1995 and 2007 was due to investment in telecommunications networks technology and the information transported across them. This legislation passed the House on June, 10, 2015, by voice vote.

H.R. 348, the Responsibly And Professionally Improving Development Act (RAPID Act), streamlines the excessively complicated and lengthy procedure for obtaining a federal permit for development, allowing approved projects to begin earlier and dramatically improving the climate for investment and job creation. March 2011 study, for example, found 351 projects stuck in permitting that could generate \$1.1 trillion and 1.9 million jobs a year during construction. Once built, each year of these projects' operations could produce another estimated \$145 billion and involve 791,000 jobs. The bill sets an 18-month maximum deadline for completion of an Environmental Assessment and a 36-month maximum deadline for an Environmental Impact Statement; establishes a 180-day statute of limitations for lawsuits challenging permitting decisions; limits judicial challenges to those presented during the permit's public notice-and-comment process; and empowers lead agencies to manage environmental reviews efficiently from start to finish, to avoid waste and duplication of effort among bureaucratic agencies. The legislation passed the House on September 25, 2015, by a vote of 233-170. CBO estimated that implementing this legislation would cost \$5 million over the next 5 years, assuming the availability of appropriated funds, because Federal agencies would incur additional administrative costs to meet the bill's new requirements.

H.R. 427, the Regulations From the Executive In Need of Scrutiny Act (REINS Act), improves congressional control over the costs of new major regulations (those that impose \$100 million or more in annual costs) by requiring agencies to submit new major regulations to Congress for approval; prohibiting such regulations from becoming effective unless and until Congress approves them; and providing fast-track up or down votes on whether to approve such rules. This cost control is vital to the promotion of job creation and economic growth. For example, during just the first six years of the current administration, federal regulators added an average of 81 new major regulations per year, and nearly 500 in total. At least 184 of these rules contained new federal prescriptions, with annual costs of nearly \$80 billion. The legislation passed the House on July 28, 2015, by a vote of 243-165. CBO and the Joint Committee on Taxation (JCT) could not determine the budgetary effects of making all future major rules subject to Congressional approval per the legislation.

H.R. 527, the Small Business Regulatory Flexibility Improvements Act, assures that federal regulators better account for the needs and circumstances of small businesses—America's primary job creators—by clarifying that agencies must measure both direct economic effects and reasonably foreseeable indirect economic effects of regulations on small businesses; requiring agencies to better assess the cumulative impacts of new regulations on small businesses; expanding opportunities for small businesses to provide early input on new rules; and, ensuring that agencies periodically review and further reduce the impacts of existing regulations that have a significant economic impact on a substantial number of small businesses. The legislation passed the House on February 5, 2015, by a vote of 260-163. CBO estimated in the 113th Congress that a previous, similar version of H.R. 527 would cost \$45 million to implement between 2014 and 2018.

H.R. 712, the Sunshine for Regulatory Decrees and Settlements Act, reduces the abuse of litigation to require new, costly regulation. It assures greater transparency in such litigation, greater intervention and public comment rights for regulated entities and the public, greater judicial scrutiny, and greater accountability for agencies when agencies propose that new

regulations be required under judicial consent decrees and settlement agreements. The legislation passed the House on January 7, 2016, by a vote of 244-173. CBO estimated that implementing H.R. 712 would cost \$7 million over the 2016-2020 period.

H.R. 1155, the Searching for and Cutting Regulations that are Unnecessarily Burdensome Act (SCRUB Act), seeks to reduce the nearly \$2 trillion annual costs of federal regulation by establishing a blue-ribbon commission to identify existing regulations that should be repealed to reduce unnecessary burdens. The bill sets a goal of at least a 15 percent reduction in costs with a minimal reduction in effectiveness and requires the Commission's annual and final repeal recommendations to be presented to Congress for approval by joint resolution. The legislation passed the House on January 7, 2016, by a vote of 245-174. CBO estimated that, assuming appropriation of the specified amounts, implementing H.R. 1155 would cost \$30 million over the 2016-2020 period.

H.R. 1643, the Digital Goods and Services Tax Fairness Act of 2015, establishes sourcing rules for the sale of digital goods and services in order to prevent multiple state taxation. It also prohibits discriminatory taxation of digital goods and services. Based on CBO's estimate, the bill could save taxpayers approximately \$1 billion annually in taxes that might otherwise be imposed in the digital economy. On June 17, 2015, the Judiciary Committee favorably reported the legislation to the House by voice vote.

H.R. 1759, the All Economic Regulations are Transparent Act (ALERT Act), requires federal regulatory agencies to provide more detailed annual disclosures about planned regulations and their expected costs, final rules, and cumulative regulatory costs. It also requires monthly, online updates on planned new regulations, so those to be affected by them know in real-time how to plan for new regulations and their impacts on budgets, planning and hiring. The legislation passed the House as a title of H.R. 712 on January 7, 2016, by a vote of 244-173. CBO estimated that preparing the monthly supplemental reports required by the bill would cost less than a million dollars a year, subject to the availability of appropriated funds, over the 2016-2020 period.

H.R. 2315, the Mobile Workforce State Income Tax Simplification Act of 2015, provides a clear, uniform framework for when states may tax nonresident employees who travel to the taxing state to perform work. In particular, the bill prevents states from imposing income tax compliance burdens on nonresidents who work in a foreign state for fewer than thirty days in a year. The Committee heard testimony that "[b]usinesses, including small businesses and family businesses, that operate interstate are subject to significant regulatory burdens with regard to compliance with nonresident state income tax withholding laws." CBO estimates that, for all states collectively, the bill would reduce revenues on a net basis by between \$50 million and \$100 million annually. However, that revenue loss to states is best viewed as tax savings to employees who travel for work. On June 17, 2015, the Judiciary Committee favorably reported the legislation to the House by a vote of 23 to 4.

H.R. 2584, the Business Activity Tax Simplification Act of 2015 restores a business' physical presence in a state, defined as presence for more than fourteen days, as a prerequisite to the state's imposition of business activity taxes. The lack of a bright-line standard for what

activities constitute nexus for business activity tax purposes has created uncertainty for companies about the effects of expanding operations. CBO estimates that the costs—in the form of forgone revenues—to state and local governments would be more than \$2 billion annually. However, that revenue loss to states is best viewed as savings to companies that can use the money to increase productivity and create jobs. On June 17, 2015, the Judiciary Committee favorably reported the legislation to the House by a vote of 18 to 7.

Ensuring an Efficient and Just Legal System

In order for the U.S. to continue to be the best place to do business, we must have a legal system that fully compensates those who have been injured while preventing abuses and gamesmanship. In short, we must ensure that when parties must come before the legal system to resolve disputes, they will know that the disputes will be handled efficiently and justly.

H.R. 526, the Furthering Asbestos Claim Transparency Act, reforms the ineffective asbestos bankruptcy trust system by introducing transparency to help combat existing fraud that dilutes recovery payments to victims of asbestos. The legislation is cost-effective as evidenced by the accompanying CBO score, which reports that the bill does not impact direct spending or revenues. On January 8, 2016, the legislation passed the House by a vote of 211-188.

H.R. 758, the Lawsuits Abuse Reduction Act, would require mandatory sanctions for frivolous lawsuits filed in federal court. It contains pro-growth policies and would enhance job creation. CBO estimates that the bill has no significant budget implications, but the bill would clearly reduce the number of costly frivolous lawsuits filed against American citizens and companies in federal court.

H.R. 1669, the Judgment Fund Transparency Act, would provide for transparency of payments made from the Judgment Fund, which is a permanent, indefinite appropriation that was created by Congress in 1956 to pay judgments entered against the United States. This bill would improve Congress's ability to act as a steward of taxpayers' money by requiring that certain information about payments from the Judgment Fund be made publicly available.

H.R. 1927, the Fairness in Class Action Litigation Act, would require class actions to include only members whose injuries are of the same type and scope, to prevent trial lawyers from including uninjured as well as injured members in the same class and artificially increasing the class size. This bill is pro-growth and would help job creation, as the bill would significantly improve the class action lawsuit system, which currently disproportionately hurts U.S. business compared to their international competitors. CBO estimated that the bill would have no significant budget effects.

H.R. 2745, the Standard Merger and Acquisition Reviews Through Equal Rules Act, reforms the outdated merger review system to eliminate existing disparities in the legal standards applied to, and processes used by, the two antitrust enforcement agencies. The differences in the merger review system used by the Federal Trade Commission and the Department of Justice result in inequitable treatment for companies that wish to merge because the identity of the reviewing antitrust enforcement agency is picked at random. The random assignment of the reviewing agency has been characterized as being determined by "the flip of a coin." The

legislation is cost-effective as evidenced by the accompanying CBO score, which reports that the bill does not impact direct spending or revenues. On September 30, 2015, the Judiciary Committee favorably reported the legislation to the House by a vote of 18-10.

H.R. 3624, the Fraudulent Joinder Prevention Act, would allow federal judges increased discretion to remove innocent local defendants (mostly small businesses) from lawsuits when such businesses were sued by trial lawyers simply to keep the case in a favorable state court. It is pro-growth and would help with job creation, as the bill would save small business the time and money currently required to deal with lawsuits filed against solely as part of trial lawyers' attempts to keep a lawsuit against another party in a favorable state court. The bill is supported by the National Federation of Independent Business, which judges the bill a big cost-saver on the part of small businesses.

Promoting Fiscal Responsibility

In order to prosper in the long term, we must enact measures to ensure that America balances its budget, keeps more money in the hands of hardworking Americans rather than Washington bureaucrats, and makes the most efficient use possible of taxpayer dollars.

A Balanced Budget Amendment to the Constitution would require that total spending for any fiscal year not exceed total receipts unless 3/5 of each chamber provides for a specific excess; require a 3/5 vote for any increases in the debt limit; requires that the President propose a balanced federal budget to Congress each year; require that legislation to increase taxes must be passed by a true majority (218 in the House and 51 in the Senate) of each chamber by a roll call vote; and provide an exception in times of war and during military conflicts that pose imminent and serious military threats to national security, but requires that any additional spending be for that military conflict. The amendment would eliminate wasteful spending and act as a strong steward of taxpayers' money. CBO in the 112th Congress stated the budgetary impact of adopting this amendment to the Constitution is very uncertain because it depends on when it would take effect and the extent to which the Congress would exercise the discretion provided by the amendment to approve budget deficits. However, adoption of the amendment would be a game changing mechanism to force Congress to finally do what it has proven time and again it cannot do consistently: balance its budget.

H.R. 7, the No Taxpayer Funding for Abortion Act, would prohibit federal funding of abortions, with limited exceptions. It would eliminate this wasteful spending and improve the stewardship of taxpayers' money. CBO in a previous Congress concluded the bill had no significant budget implications, but clearly the bill would prevent taxpayer money from being spent on abortions in accordance with the wishes of a majority of Americans.

H.R. 2947, the Financial Institution Bankruptcy Act, protects taxpayers' money by enhancing the Bankruptcy Code to facilitate the efficient resolution of failing financial institutions. By strengthening the bankruptcy process for financial institutions, it will reduce the likelihood that these firms will look for taxpayer-funded bailouts to the extent they fail in the future. Additionally, creditors will be incentivized to increase private counterparty monitoring of financial institutions, which will supplement the regulatory oversight of these firms.

Furthermore, the legislation greatly diminishes the likelihood that regulators will invoke the regulatory resolution process created under Title II of the Dodd–Frank Wall Street Reform and Consumer Protection Act. The legislation is cost-effective as evidenced by the CBO score that accompanied substantively similar legislation passed last Congress, which reported that the bill does not significantly impact the budget. Indeed, CBO stated “the legislation would lower the probability that [a financial institution] would be liquidated by the Federal Government upon failure.” On December 1, 2014, the House passed substantively similar legislation by a voice vote under suspension of the rules.

The Committee also plans legislation to prohibit U.S. government settlements from requiring payments to third-party groups. An investigation by the House Judiciary and Financial Services Committees revealed that the Justice Department (DOJ) is systematically subverting Congress’s appropriations authority by using settlements to require mandatory donations to activist groups. Required donations exceeded half-a-billion dollars in just the last seventeen months. These payments occur entirely outside of the Congressional appropriations and oversight process. In some cases, DOJ is using mandatory donations to restore funding that Congress specifically cut. In addition, activist groups which stood to gain from mandatory donation provisions were involved in placing those provisions in the settlements. Congress’s appropriations power is one of its best tools for combating Executive overreach, conducting effective oversight and eliminating wasteful spending. Accordingly, it is essential that the appropriations power be safeguarded. The planned legislation would accomplish that.

Other potential initiatives may come out of the work of the House Judiciary Committee’s Task Force on Executive Overreach, which may propose legislation that would limit the abuse of budget and other authorities by the Executive Branch acting without the consent of Congress.

A Fair Immigration System that Works for America

The first step to reforming our broken immigration system is to enforce the law. Until the Executive Branch gets serious about enforcing our laws, we will continue to have a flood of unlawful immigrants who are willing to take the risk of illegally crossing our borders in the hopes that they can “disappear” into the interior of the country. We will also continue to have the risk that foreign terrorists and others who wish to do us harm will be able to easily infiltrate our country. Once we secure our borders and enforce our laws against illegal entry, then we must look at our broken legal immigration programs to ensure that they reward those with the desire and skills to contribute to our nation’s growth, including encouraging the best and brightest minds from around the world to come and contribute to the U.S. economy and reforming America’s broken temporary guest worker programs.

H.R.1147, the Legal Workforce Act, will help create jobs for U.S. citizen and legal immigrant workers by requiring employers to utilize E-Verify for their new hires – thus decreasing the number of unlawful immigrants working in the U.S. without authorization. E-Verify is a web-based system that checks the Social Security Numbers of newly hired employees against Social Security Administration and Department of Homeland Security records to help ensure that they are genuinely eligible to work in the U.S. In the 113th Congress, the Congressional Budget Office estimated that enactment of this bill would cost approximately \$1.3

billion over the 2014-2023 period (assuming appropriations of the necessary amounts) and cumulatively increase budget deficits by approximately \$30 billion over this period.

H.R. 1148, the Michael Davis, Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act, will help preserve jobs for U.S. citizens and legal immigrant workers by giving the Department of Homeland Security (DHS) more tools to enforce federal immigration laws and allowing states and localities to enforce their own complementary immigration laws – thus decreasing the number of unlawful immigrants competing for available jobs. In the 113th Congress, the Congressional Budget Office estimated that enactment of this bill would cost about \$22.9 billion over the 2014-2018 period (assuming appropriations of the necessary amounts) and cumulatively decrease budget deficits by \$4 million over this period.

H.R. 1149, the Protection of Children Act of 2015, will help preserve jobs for U.S. citizens and legal immigrant workers by expediting the safe return of unlawful unaccompanied minors to their home countries who might otherwise receive work authorization during their removal proceedings and thus compete for available jobs.

H.R. 1153, the Asylum Reform and Border Protection Act of 2015, will help preserve jobs for U.S. citizens and legal immigrant workers by reforming our asylum system to reduce the number of applicants for asylum with fraudulent or unmeritorious claims who might otherwise receive work authorization during the consideration of their claims and thus compete for available jobs.

Encouraging Innovation

America continues to be the world leader in innovation and creativity. In order to maintain this position moving forward, we must have intellectual property laws that reward creators while punishing bad actors and abuses, so that our laws continue to function to reward creativity and innovation in the digital age.

H.R. 9, the Innovation Act, would reduce abusive patent litigation and modify existing law to streamline reviews of patents. It would reduce the financial burden imposed upon American businesses by those engaged in abusive litigation efforts by enhancing pleading requirements and shifting fees where there is no legitimate basis for litigation. The Innovation Act would enable American innovators to continue to bring new products and technologies to market while deterring those who misuse the patent system in ways that impose costs upon American businesses of all sizes. CBO estimated that the legislation has no significant budgetary impact.

The committee also continues to conduct oversight over our nation's copyright laws to ensure they are working to reward creativity and innovation in the digital age.

Freedom to Prosper: Securing Citizens and Safeguarding Liberties

In order to continue to foster a pro-growth environment, we must have stable, safe streets in our nation's counties and cities that are free of violence. We must also have clear and just

rules of the road for what constitutes criminal conduct and encourage wrongdoers to become productive members of society once they have served their punishment. Otherwise, we will continue to reap the human and economic consequences of perpetual offenders.

H.R. 759, the Recidivism Risk Reduction Act, is bipartisan legislation that promotes the use of enhanced risk assessment tools to reduce recidivism, lower the crime rate, and reduce the amount of taxpayers' money spent on the federal prison system. The savings generated by this bill can be reinvested into further expansions of proven recidivism reduction programs during a five-year phase in period. After that, it is anticipated that the savings can be used either for other Justice Department priorities such as FBI agents, U.S. Attorney offices, etc., or the savings can be used to help reduce the deficit. CBO has not yet issued a cost estimate for this legislation.

HR 1854, the Comprehensive Justice and Mental Health Act of 2015, was reported favorably by the House Judiciary Committee on January 12, 2016. This bipartisan bill would reauthorize and update the Mentally Ill Offender Treatment and Crime Reduction Act. It will promote the more effective use of taxpayers' money and enhance public safety and community health by diverting individuals with mental illness from the expensive criminal justice system. In addition, the bill reforms the grant program designed to assist mentally ill offenders by improving transparency and program accountability and reduces the cost to taxpayers by lowering the funding authorization for the program from \$50 million to \$30 million.

H.R. 3406, the Second Chance Reauthorization Act of 2015, is bipartisan legislation that reauthorizes the Second Chance Act (SCA), a program created by Congress in 2008 that has helped reduce recidivism by ex-inmates in communities across the country. The bill amends existing SCA grant programs to ensure that the resources of nonprofit and faith-based organizations can be leveraged to enhance the effectiveness of federal funding provided for the Bureau of Prisons' prisoner reentry programming efforts, eliminates obsolete programs, and contains responsible auditing provisions to help the Justice Department's Office of Inspector General identify waste, fraud, and abuse. This bill reforms outdated provisions of the SCA and will help stretch federal dollars and improve the effectiveness of SCA grant programs. In addition, it promotes economic growth by reducing crime and ensuring that a greater number of ex-offenders go on to become productive members of society. CBO is currently working on a cost estimate for H.R. 3406.

H.R. 3713, the Sentencing Reform Act of 2015, is bipartisan legislation that makes targeted changes to federal sentencing law to: reform mandatory minimum sentences for certain federal drug offenders; broaden the existing "safety valve" and create a new, narrowly-tailored safety valve for certain drug offenders; reform sentences for certain firearms offenses; and apply the Fair Sentencing Act of 2010 retroactively. The bill contains important limitations on the retroactive application of these provisions, by limiting them to offenders who have not served a prior sentence for a serious violent felony. This bill reforms outdated policies by and improves the stewardship of taxpayers' money by making commonsense changes to the front-end of the criminal justice system to ensure our federal laws effectively and appropriately punish wrongdoers and work as efficiently and fairly as possible. It also ensures that serious violent criminals serve the full time for their crimes in prison. CBO has not yet issued a cost estimate for this legislation.

H.R. 4002, the Criminal Code Improvement Act of 2015, is bipartisan legislation that amends the Federal criminal code by creating a default criminal intent, or *mens rea*, standard. It establishes a default standard of “knowingly,” which will apply in cases where Federal criminal law, including longstanding statutory law AND established case-law, does not provide a state of mind requirement for the particular offense. The bill is pro-growth because it protects Americans and businesses that do not know, or have reason to know, that they are violating federal law from the heavy hand of the federal government, and by curbing strict liability criminalization. CBO has not yet issued a cost estimate for this legislation.

H.R. 4003, the Regulatory Reporting Act of 2015, requires that every Federal agency that enforces regulations carrying criminal penalties issue a report to Congress listing those regulations, and providing information on those regulations. It also requires agencies to tell Congress why criminal penalties are necessary to enforce the regulations; whether there is an intent requirement associated with the regulation; whether the public has received notice of the regulatory prohibition; and whether the regulation is necessary to protect public safety or national security. This bill is pro-growth because it will shed a light on, and possibly result in the reduction of, criminal penalties associated with certain overly burdensome regulations. CBO has not yet issued a cost estimate for this legislation.

The Committee also plans to reform the Justice Department’s outdated civil asset forfeiture system by passing bipartisan legislation to add new procedural protections and transparency to the system, and also by reforming the equitable sharing aspect of this program. Equitable sharing is a process by which the net proceeds of forfeitures are shared with state and local law enforcement agencies in proportion to the degree of their direct participation in the law enforcement effort that resulted in the forfeiture. Faults with the current program have been highlighted over the last 18 months including through an award-winning multi-part series by the Washington Post. The Committee hopes to reform the system to alleviate concerns by some observers that “policing for profit” is occurring, while at the same time making sure forfeiture funds reach state and local law enforcement entities that have helped advance federal law enforcement priorities. There are no cost estimates for this proposed legislation at this time.